

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE AUTOMOTIVE PARTS ANTITRUST
LITIGATION

CASE NO. 12-MD-02311
HON. MARIANNE O. BATTANI

In Re: WIRE HARNESS CASES

THIS RELATES TO:
ALL DIRECT PURCHASER ACTIONS

2:13-cv-00101-MOB-MKM

**SETTLEMENT CLASS COUNSEL’S REPORT ON DISSEMINATION OF
NOTICE OF PROPOSED SETTLEMENTS WITH MITSUBISHI ELECTRIC AND
FURUKAWA DEFENDANTS AND CLASS MEMBERS’ RESPONSE**

Settlement Class Counsel submit the following report concerning the dissemination of notice pursuant to this Court's Order dated July 27, 2018 (2:12-cv-00101, Doc. No. 552) (the “Notice Order”), and Settlement Class members’ response to the notice program. As described more fully below, notice was mailed to 7,475 potential Settlement Class members and published in accordance with the Notice Order. Six requests for exclusion from the Mitsubishi Electric Settlement Class and four requests for exclusion from the Furukawa Settlement Class were timely submitted. No objections were filed to either of the proposed settlements, to the proposed plan for distribution of settlement funds, or to Settlement Class Counsel’s request for an award of attorneys’ fees and reimbursement of litigation costs and expenses.

Settlement Class Counsel respectfully submit that the extremely low number of opt-outs and the complete absence of objections militate strongly in favor of approval of the proposed settlements, the proposed plan for distribution of settlement funds, and the request for attorneys’ fees and litigation costs and expenses.

I. DISSEMINATION OF NOTICE TO THE CLASS

Pursuant to the Court's Notice Order, on August 16, 2018, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the Notice and Claims Administrator retained by Direct Purchaser Plaintiff, mailed 7,475 copies of the Notice of Proposed Settlements of Direct Purchaser Class Action with the Mitsubishi Electric and Furukawa Defendants and Hearing on Final Settlement Approval and Related Matters, and Claim Form (the "Notice") to potential Settlement Class members by first class mail, postage prepaid. Declaration of Ryan Kao, Senior Project Manager for Epiq. Exhibit 1 at ¶ 6. Epiq also re-mailed returned notices for which updated addresses were obtained. *Id.* at ¶ 7. In addition, a copy of the Notice was (and remains) posted online at www.AutoPartsAntitrustLitigation.com/wh, a website dedicated to this litigation. *Id.* at ¶ 9.

Also in accordance with the Notice Order, the Summary Notice of Proposed Settlements of Direct Purchaser Class Action with the Mitsubishi Electric and Furukawa Defendants and Hearing on Final Settlement Approval and Related Matters (the "Summary Notice") was published in the national edition of *The Wall Street Journal* and in *Automotive News* on August 27, 2018. *Id.* at ¶ 8.

Notice to the Mitsubishi Electric and Furukawa Settlement Classes under Fed. R. Civ. P. 23 has, therefore, been provided as ordered by the Court.

II. ABSENCE OF OBJECTIONS TO THE PROPOSED SETTLEMENTS, THE PROPOSED DISTRIBUTION PLAN, AND REQUESTS FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

The Notice advised that any objection to the proposed settlements, the proposed plan for distribution of settlement funds or to Settlement Class Counsel's request for an award of attorneys' fees and litigation costs and expenses had to be filed with the Clerk by October 5, 2018, with copies mailed to Settlement Class Counsel and to counsel for the Settling Defendants.

As of the date of the filing of this Report, no objection to either of the proposed settlements, to the distribution plan, or to the fee and expense request has been filed with the Court or received by Settlement Class Counsel.

III. REQUESTS FOR EXCLUSION

The Notice further advised that requests for exclusion from the Mitsubishi Electric and Furukawa Settlement Classes had to be mailed to Settlement Class Counsel and to counsel for the Settling Defendants, postmarked no later than October 5, 2018. Six requests for exclusion from the Mitsubishi Electric Settlement Class and four requests for exclusion from the Furukawa Settlement Class were timely submitted and have been received by Settlement Class Counsel as of this date. *See* Exhibit 1 at ¶ 11. *See also* Exhibits 2 and 3.

Settlement Class Counsel respectfully submit that, for the reasons set forth in the Brief in Support of Direct Purchaser Plaintiffs' Motion for Final Approval of Proposed settlements with the Mitsubishi Electric and Furukawa Defendants and Proposed Plan for Distribution of Settlement Funds (the "Final Approval Brief") (2:12-cv-00101, Doc. No. 563), each of the Mitsubishi Electric and Furukawa settlements, is fair, reasonable and adequate under the relevant criteria, and warrants final approval.

IV. THE REACTION OF MEMBERS OF THE SETTLEMENT CLASSES SUPPORTS APPROVAL OF THE SETTLEMENTS, THE PROPOSED PLAN FOR DISTRIBUTION, AND THE REQUEST FOR AN AWARD OF FEES AND EXPENSES

The reaction of the class has been recognized repeatedly by courts within this Circuit and elsewhere as a factor in evaluating the fairness, reasonableness, and adequacy of a proposed settlement. *See, e.g., Sheick v. Auto. Component Carrier LLC*, No. 2:09-cv-14429, 2010 WL 4136958, at *22 (E.D. Mich. Oct. 18, 2010) ("scarcity of objections – relative to the number of class members overall – indicates broad support for the settlement among Class Members."); *In*

re Cardizem CD Antitrust Litig., 218 F.R.D. 508, 527 (E.D. Mich. 2003) (“That the overwhelming majority of class members have elected to remain in the Settlement Class, without objection, constitutes the ‘reaction of the class,’ as a whole, and demonstrates that the Settlement is ‘fair, reasonable, and adequate.’”); *In re Delphi Corp. Sec., Deriv. & “ERISA” Litig.*, 248 F.R.D. 483, 499 (E.D. Mich. 2008) (small number of opt-outs or objections is indicative of the adequacy of the settlement).

Individual notice of the proposed settlements was mailed to 7,475 potential Settlement Class members identified by Defendants, published in *Automotive News* and in *The Wall Street Journal*, and posted on-line. The low number of opt-outs and total absence of objections militates strongly in favor of approval of the proposed settlements, the proposed plan for distribution of settlement funds, and the request for attorneys’ fees, and reimbursement of litigation costs and expenses.

V. REQUEST FOR AN AWARD OF ATTORNEYS’ FEES

As of July 31, 2018, Plaintiff’s Counsel’s lodestar, based upon historical rates, was \$83,362,225.91. Direct Purchaser Plaintiffs’ Memorandum in Support of Their Motion for an Award of Attorney’s Fees and Litigation Costs and Expenses, at 14 (the “Fee Brief”) (2:12-cv-00101, Doc. No. 564). Since that date, Plaintiffs’ Counsel have continued their efforts on behalf of the Settlement Classes by, among other things, drafting the final settlement approval submissions and overseeing the dissemination of notice to members of the Settlement Class in accordance with the Notice Order. As a result of this continued effort, as of September 30, 2018, Plaintiff’s Counsel’s combined lodestar was \$83,473,448.90.

By Order dated August 10, 2017, the Court awarded attorneys fees of 30% of the common fund created by the Chiyoda, Fujikura, G.S. Electech, Lear, LEONI, Sumitomo, Tokai Rika, and

Yazaki settlements, after deducting its award of reimbursement of costs and expenses. (2:12-cv-00101, Doc. No. 495, at ¶ 22). The Court also authorized Plaintiffs’ counsel to use up to \$7,500,000.00 from the settlement proceeds for future payments of litigation expenses, and awarded counsel 30% of the “unused portion” of the \$7,500,000.00.¹ (2:12-cv-00101, Doc. No. 495, at ¶¶ 7, 22). Were the Court to award a fee of 33⅓% of the combined Mitsubishi Electric and Furukawa settlement proceeds of \$19,680,320.00, less litigation expenses from May 1, 2017 through July 31, 2018 of \$45,518.56, the overall multiplier on fees awarded for all 10 settlements to date would be a negative lodestar multiplier of approximately .46.

VI. CONCLUSION

Based upon the foregoing, and for the reasons set forth in Direct Purchaser Plaintiff’s Final Approval Brief and Fee Brief, it is respectfully requested that the Court grant final approval of the proposed Mitsubishi Electric and Furukawa settlements, the proposed plan for distribution of settlement funds, and the requests for attorneys’ fees and litigation costs and expenses.

DATED: October 29, 2018

Respectfully submitted,

/s/David H. Fink

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¹ Plaintiffs’ Counsel expended \$1,839,118.81 of the \$7,500,000, leaving an “unused portion” of \$5,660,881.19. 30% of this amount yields a fee of \$1,698,264.36, which is included in the calculation of counsel’s lodestar multiplier referenced above.

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, I electronically filed the foregoing paper with the Clerk of the court using the ECF system which will send notification of such filing to all counsel of record registered for electronic filing.

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